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JAN 24 2007

Preliminary Amendment  
Appl. No. 09/770,518

## REMARKS

This is a RCE of U.S. application No. 09/770,518 ("the '518 application") filed on January 26, 2001. Claims 1-21 were originally filed in the '518 application. In the most recent Amendment filed on March 20, 2006, Applicants stated claims 1-51, 53, 54, 57-61, 63, 67, 68, 71-75, 77, 81, 82, 85-89, and 91 were canceled, and claims 52, 66, and 80 were amended. Therefore, claims 52, 55, 56, 62, 64-66, 69, 70, 76, 78-80, 83, 84, 90, 92, and 93 were pending. In this Preliminary Amendment, no amendment or cancellation is made of any pending claim. Accordingly, upon entry of this Preliminary Amendment, claims 52, 55, 56, 62, 64-66, 69, 70, 76, 78-80, 83, 84, 90, 92, and 93 will remain pending.

## Claim Rejections – 35 USC § 103

In the June 2, 2006 Office Action, the Examiner sought clarity as to if various claims were commonly owned. Applicants hereby submit that the subject matter of the various claims in the present application was commonly owned at the time any inventions covered therein were made.

## Claim Rejections – 35 USC § 103

Claims 52, 55, 56, 62, 64-66, 69, 70, 76, 78-80, 83, 84, 90, 92, and 93 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Petri *et al.* (EP 0842 605 A1) in view of Belfer *et al.* (U.S.P.N. 6,106,854). Examiner first asserts that Petri discloses a method for spraying a disinfectant composition in aerosol form on inanimate surfaces, and that upon spraying the composition onto a hard surface, no residues are left (equivalent to leaving an essentially dry surface having anti-microbial agent deposited upon). While the Examiner admits that Petri fails to teach higher concentrations of ethanol, she alleges that it would be obvious to combine Petri with Belfer (which discloses ethanol in a concentration range of 35.0-50.0% by weight) to arrive at the claimed invention. Examiner maintained Applicants' arguments as non-persuasive by reasoning that the inclusion of essential oils, polymeric thickeners, and surfactants would still render Petri composition a flash-dry composition (*See*, Office Action, page 6, lines 6-8).

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As detailed in the present application, a flash-dry composition comprises any (liquid) flash vaporization component which is able to impart to the composition a flash vaporization characteristic, i.e., to achieve in a **relatively, (desired or necessary) short period of time** after applying the flash dry aerosol to a surface, a state wherein the surface is essentially dry leaving behind the antimicrobial agent (i.e., a surface has achieved a desired or necessary state of dryness) (*See*, Specification, page 4, lines 19-24). Further, the claimed flash-dry composition is exemplified in Example 1. As shown in Example 1, the claimed composition of a hydrogen peroxide solution in ethanol ( $H_2O_2$  10% in ETOH) dries within a relatively short period of time (e.g. minutes), similar to a control flash-dry composition of ETOH 95% (*See*, Specification, page 11).

Applicants understand the basis of the Examiner's rejection in that she characterizes the Petri composition as a flash-dry composition, i.e., the Petri composition would have a drying time identical to that of the claimed invention.

Applicants submit that the Petri composition is not a flash-dry composition. To show that the drying times of the Petri composition and the claimed composition are in fact different, Applicants are concurrently submitting herewith a Declaration Traversing Rejections under 37 CFR § 1.132 ("Declaration"). In the Declaration, Applicants have conducted a study to compare the drying times of the Petri composition and the claimed composition. Applicants first prepared the Petri composition to match Examples I-X disclosed in Petri (*See*, Petri, page 11) as well as the claimed composition of Solutions I-V (*See*, Declaration, pages 3-4). Test solutions were sprayed onto a surface and the drying times were recorded. As clearly demonstrated in the Declaration, the Petri composition has an average drying time of **~26.5 minutes**, while the claimed invention has an average drying time of only **~5.5 minutes**. The difference between the two drying times is statistically significant ( $p < 0.05$ ). Thus, the Petri composition is **NOT** a flash-dry composition, as asserted by the Examiner. These data support Applicants' argument all along, i.e., Petri composition is different from the claimed composition and Petri composition is not a flash-dry composition.

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Furthermore, with respect to the Examiner's argument that "no residues left" is equivalent to "leaving an essentially dry surface", Applicants respectfully disagree. Because Petri composition is not a flash-dry composition, this argument is believed to be irrelevant. However, Applicants reserve the right to contest this Examiner's position.

Lastly, Belfer also fails to disclose a flash-dry composition. The claimed invention can not be achieved based on Petri alone or in combination with Belfer. Accordingly, Applicants respectfully submit that the present invention is patentable over Petri in view of Belfer. For at least these reasons, Applicants respectfully request that the 35 U.S.C. § 103 rejection be withdrawn.

#### **CONCLUSION**

In view of the foregoing, Applicants respectfully request reconsideration, withdrawal of rejections, and allowance of all claims is earnestly solicited.

The Commissioner is authorized to charge any required fees, including any extension and/or excess claim fees, any additional fees, or credit any overpayment to Goodwin Procter LLP Deposit Account No. 06-0923.

Respectfully submitted for Applicants,



Date: January 24, 2007

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